

TECHNICAL AMENDMENT
June 22, 2017

103 KAR 18:120. Security for compliance; bonds.

RELATES TO: KRS 141.310

STATUTORY AUTHORITY: KRS 131.130, 141.310~~[Chapter 13A]~~

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation implements KRS 141.310(12) which authorizes the department~~[cabinet]~~ to require certain employers to post withholding performance bonds.

Section 1. Enforcement of Trusteeship. Additional means of enabling the Department of Revenue ~~[Cabinet]~~ to collect withholding taxes has been provided in KRS 141.310(12) which authorizes the department~~[cabinet]~~ to fix the amount of and demand the posting of a corporate surety bond or cash not to exceed \$50,000 by any employer required under KRS Chapter 141, or the administrative regulations promulgated thereunder, to withhold Kentucky income taxes from wages of employees.

Section 2. Bond Requirements. For purposes of KRS 141.310(12) a person from whom the department is authorized to require a withholding tax security bond and those persons from whom a security bond may be required includes but is not limited to the following:

(1) An employer who is delinquent in either filing withholding tax returns required by law or is delinquent in submitting to the department~~[cabinet]~~ any tax withheld from an employee, or both, or

(2) An employer, whom for any reason, the department~~[cabinet]~~ determines is or may become an insecure risk for which there is a need to insure compliance with the law, including every out-of-state employer during the employer's first year of operation in this state or any employer engaged under one (1) or more contracts the total of which is to be performed within one (1) year.

Section 3. Bond Procedures. The department~~[cabinet]~~, after determining that a bond is necessary to insure compliance of reporting and paying withholding taxes, shall demand the posting of such a security bond by written notice transmitted by certified mail and shall include therein instructions and forms for the convenience of the employer.

Section 4. Enforcement of Bond Requirement. (1) Failure to post the bond in the amount the department~~[cabinet]~~ demanded from the employer within twenty (20) days from the date of the written notification by certified mail will, by such failure, authorize the department~~[cabinet]~~ to invoke forthwith, and without further delay, its statutory authority to seek a court order requiring cessation of all business or activities of such an employer failing to post the bonds; provided, that the employer may accompany the bond with, and simultaneously file with the department~~[cabinet]~~, a written protest or appeal from the department's~~[cabinet's]~~ demand for the bond; provided further, that any such protest or appeal shall be supported by a written memorandum advancing the employer's reasons and proposed justifications why such employer should be relieved from posting the bond or the objections to the amount of the bond.

(2) Within sixty (60) days after receipt of any bond posted under protest or appeal, the department~~[cabinet]~~ shall furnish the employer by certified mail a final ruling or order and notice of any change as to, or in the amount of the bond that may be necessary to be made by the department~~[cabinet]~~ in accordance with such final ruling or order in response to the protest or appeal.

Section 5. Change in Amount of Bond. The department~~[cabinet]~~ has authority at any time to increase or decrease the amount of any bond that has been posted.

Section 6. Monthly Returns and Payment. Notwithstanding the provisions of 103 KAR 18:040 any out-of-state or delinquent employer may be required to file monthly withholding tax returns and to accompany such monthly returns with a complete payment of all taxes withheld during the month covered by the return.

Section 7. Court Jurisdiction. The department~~[cabinet]~~ may initiate action seeking a court order, requiring cessation of all business operation or activity of any employer failing to comply with this administrative regulation, in the Franklin Circuit Court or in any other circuit court which may have jurisdiction over the area in which the employer resides, or in which some or all of the employer's business is conducted, or having jurisdiction of the area in which property of the employer is located. The department~~[cabinet]~~ may institute any such legal action in accordance with any provision of this administrative regulation. (IW-12; 1 Ky.R. 331; eff. 2-5-1975; 20 Ky.R. 2879; 21 Ky.R. 16; eff. 6-17-1994; TAm eff. 6-22-2017.)